

The 18th November, 1986

No. 9/8/86-Lab./9319.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of (i) Secretary H.S.E.B., Chandigarh (ii) Executive Engineer, H.S.E.B., Narnaul (Mahendergarh).

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Ref. No. 458 of 1985

between

SHRI VIJAY SINGH WORKMAN AND THE RESPONDENT-MANAGEMENT OF  
SECRETARY, H. S. E. B., CHANDIGARH, (ii) EXECUTIVE  
ENGINEER, H. S. E. B., NARNAUL  
(MAHENDERGARH).

Present:—

Shri Mahavir Tyagi for the workman.

Shri V. P. Sharma for the respondent.

AWARD

This reference under section 10(i)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947), as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—vide its endorsement No. ID/GGN/48-85/33155-61, dated 7th August, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Vijay Singh, workman and the respondent-management of (i) Secretary, H. S. E. B., Chandigarh (ii) Executive Engineer, H. S. E. B., Narnaul (Mahendergarh). Accordingly, it has been registered as reference No. 458 of 1985.

2. The claim of Vijay Singh is that he is a Ex-Serviceman and in 1967 he was employed as a chowkidar and posted at Bhiwani and after 2½ years he was transferred to Mahendergarh as a peon and then after three years he was transferred to Kanina. According to him his son had fallen seriously sick in 1974 and being compelled by the circumstances, he had resigned his job but lateron he had realised his mistake and had applied to be reinstated in his post and accordingly his case was recommended for that purpose but he was not allowed to resume the duty. His grievance is that his resignation and not been accepted and respondent had not made any payment towards General Provident Fund etc., to him. He accordingly has come forward to withdraw his resignation and the payment of arrears also.

3. On notice, the respondent had appeared and filed detailed written statement contesting the said claim. The first preliminary objection is that the claim is badly time barred and he has no locus standi to press his claim for re-appointment. Since he is estopped by his act and conduct to claim so. It is claimed that he had relinquished his job of his own accord and reliance is being placed on application dated 31st January, 1977. As far as merit of the case is concerned, it has been pointed out that he had submitted his resignation on 24th June, 1974 and no was directed on 15th July, 1974 to deposit one month pay and then after ten years he had made an application in December, 1984 for re-employment and comments thereof were forwarded to the higher authorities and he was not re-appointed and since then resignation stands accepted. Accordingly request has been made that reference be answered against him. By way of rejoinder he has repeated his claim as well as allegation also.

4. My learned predecessor had framed the following issues on 9th January, 1986: —

- (i) Whether the claimant has resigned from his job of his own and if so to what effect?
- (ii) As per reference?

In support of the claim, Shri Vijay Singh appeared and had stated on oath. On the other hand Clerk of respondent has also appeared and deposed on oath. I have heard both the parties as represented above. The findings are as below:—

5. *Issue No. I & II*:— Both the issues are interlinked and as such then conveniently be disposed of together. The scope of present reference is limited one as the respondent has to prove that services of Shri Vijay Singh were legally terminated or he had resigned at his own accord. The foundation of the case is demand notice dated 13th February, 1985 and according to the same in 1974 his son had become seriously sick and being compelled of the circumstances, he had relinquished his job and had tendered his resignation. He had desired to resume his duty again but that request had not been acceded to. His claim was that he is entitled to be reinstated since his resignation had not been accepted. From this demand notice it has come surface that he is claiming his job simply on the ground that resignation tendered by him in 1974 had not been accepted until 1985 though there has been gap of 11 years. In my opinion the scope of enquiry is very limited one. He repeated his claim as well as allegation,—*vide* his claim statement dated 4th September, 1985. It is some what necessary at this stage to make a reference to the documentary evidence. Shri Vijay Singh had submitted his resignation Ex. M-1, dated 24th June, 1974. It has been owned by him on oath. S. D. O. concerned had informed the concerned Xen on 1st July, 1974,—*vide* Ex. M-8 about his resignation and request was made to appoint a substitute,—*vide* Ex. M-2 he was desired to issue no demand certificate and further to direct to deposit one month pay as a condition precedent to leave the job without notice of one month and accordingly he was directed to do so,—*vide* Ex. M-3, dated 15th July, 1984 and reminder was issued,—*vide* Ex. M-9 to pursue the matter. Than after a gap of 3 years he had applied in 1977 for final settlement of his accounts with the Department and then after 8 years he had served notice dated 13th February, 1985 on the respondent. From the above it is quite clear that it is a admitted fact that Vijay Singh had tendered his resignation Ex. M-1 on 24th June, 1974 and had sent the same to the respondent by post and thereafter he never worked against any post. The simple question arises whether it is case of absentism after tendering the resignation or termination and now he is estopped to press for the job on the ground of none acceptance of the resignation. In my opinion, he is not entitled for any relief since after a gap of 11 years he had served notice to the respondent and such a long gap must not be condoned in any circumstances. Any how respondent department is of essential services one and in my opinion its employees must not be allowed to be at large to tender the resignation when warranted by the circumstances and withdraw the same as and when one is in need of job. On behalf of the respondent reliance has been placed on 1973. -(i) S. L. R. Page 277, Nirvair Singh Vs. P. S. E. B. This case is applicable on the fact of the present case with full force. In that case Line Superintendent had tendered resignation alongwith one month pay and he left the job. However, after two days he had sent telegramme to withdraw the resignation and he was allowed to join subject to approval and he was re-appointed only and on reference it was decided that he had tendered his resignation and he could not be allowed to withdraw the same lateron. The matter was taken up in a Writ Petition and it was decided that P.S.E.B. is not a State and its employee do not enjoy any statutory status and in between the two there is contract of service which is governed by the service rules and conditions. It was also observed that its employees cannot be compelled to continue in service and once resignation is received the same is valied. It has also been observed that voluntary absence from duty is to be treated as break in service and it must not be converted into leave of the kind due. In the present case there is gap of 11 years after tendering the resignation. While in the above mentioned case there is gap of 2 days only and that was not condoned and then present case is on the face of it, a bad one. In view of the above it is held that Shri Vijay Singh had abandoned his job himself and after a gap of 11 years, he is not entitled to claim the same. In this manner, issue No. I is decided against the petitioner and in favour of the respondent.

6. *Issue No. 2* :—Issue No. 2 does not arise in view of my finding on Issue No. I. The reference is accordingly answered against Shri Vijay Singh.

Dated, the 18th September, 1986.

A. S. CHALIA,  
Presiding Officer,  
Labour Court, Faridabad.

Endst. No. 2357, dated 1st October, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act. 1947.

A. S. CHALIA,  
Presiding Officer,  
Labour Court, Faridabad.